

**Guppy Plastic Industries Sdn Bhd v Roshamiza bt Muhamad
& Ors**

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02-235
OF 2010

ABDUL WAHAB PATAIL, LINTON ALBERT AND ANANTHAM
KASINATHER JJCA
5 JUNE 2012

*Civil Procedure — Certiorari — Application for — Application to quash award of
Industrial Court — Whether High Court should not quash findings of fact by
Industrial Court simply because different approach could have been taken — Not
High Court's function to review, reassess, reappraise evidence or draw own inferences
on the facts to replace finding of Industrial Court — Whether High Court should
not interfere with Industrial Court's upholding of dismissal by company unless
punishment so disproportionate as to be irrational*

The three respondents were office-bearers of the workers' union in the
appellant company and were dismissed from employment after a domestic
inquiry found them guilty of three charges of misconduct. The charges
included the dissemination/publication to third parties of allegedly untrue and
scandalous information concerning the appellant and the carrying out of
activities contrary to the appellant's interests during the respondents' working
hours. The Industrial Court upheld the respondents' dismissal as having been
done with just cause or excuse as it found as a fact that the charges of
misconduct against the respondents had been proven. The respondents applied
to the High Court to quash the award of the Industrial Court. In quashing the
award, the High Court ordered the Industrial Court to rehear the issue of an
appropriate punishment to be imposed on the respondents other than
dismissal. The High Court held that dismissal was disproportionate to the
misconduct committed and 'was unduly harsh and motivated by an extraneous
factor, namely, to nip the in-house union activities in the bud'. The appellant
appealed to the Court of Appeal against the High Court's decision.

Held, allowing the appeal and setting aside the High Court's decision:

- (1) Findings of fact by the Industrial Court should not be quashed by the
High Court simply because a different approach could have been taken.
It was not the High Court's function to review, reassess, reappraise
evidence or draw its own inferences on the facts to replace that of a
specialised tribunal in industry (see para 8).
- (2) The High Court's finding that the dismissal was unduly harsh and 'was
motivated by an extraneous factor, namely, to nip the in-house union

- A activities in the bud' was in fact replacing the conclusion or finding of fact of the Industrial Court within an area of its specialisation (see para 9).
- (3) Although it was within the High Court's powers in certiorari proceedings to disagree with the Industrial Court on the conclusions or inferences drawn by the latter from the proved or admitted evidence on the ground no reasonable tribunal similarly circumstanced would have arrived at such a conclusion or drawn such an inference, it was not for the court to lightly substitute its view for that of the Industrial Court nor to lightly substitute its view of what was the appropriate punishment for that of the employer, in particular as to dismissal, unless the punishment was irrational (see para 10).
- (4) That a punishment was heavier than what a court thought was appropriate did not mean that the punishment was irrational. It must be so disproportionate that it was irrational (see para 11).
- (5) An employer was entitled to his own judgment as to what was the appropriate punishment for the general good of his company and his other employees unless such punishment was shown to be irrational. Misinformation, disinformation and breach of confidence, as was the subject matter of the charges against the respondents, were not within accepted norms of legitimate union activity. As such, the punishment against the respondents was not disproportionate as to be irrational and to warrant intervention (see para 11).

F **[Bahasa Malaysia summary]**

- Tiga responden merupakan pemegang-pemegang jawatan kesatuan pekerja dalam syarikat perayu dan telah dipecat daripada pekerjaan selepas siasatan domestik mendapati mereka bersalah atas tiga pertuduhan salah laku.
- G Pertuduhan-pertuduhan tersebut termasuklah pengedaran/penerbitan kepada pihak-pihak ketiga maklumat yang dikatakan tidak benar dan mengaibkan berkaitan perayu dan pelaksanaan kegiatan-kegiatan yang bertentangan dengan kepentingan perayu semasa waktu bekerja responden-responden. Mahkamah Perusahaan mengesahkan pemecatan responden-responden sebagai suatu yang telah dilakukan dengan sebab atau alasan yang adil kerana ia mendapati pada hakikatnya bahawa pertuduhan-pertuduhan salah laku terhadap responden-responden itu telah dibuktikan. Responden-responden telah memohon kepada Mahkamah Tinggi untuk membatalkan award Mahkamah Perusahaan. Dalam membatalkan award itu, Mahkamah Tinggi memerintahkan Mahkamah Perusahaan untuk mendengar semula isu tentang hukuman sesuai untuk dikenakan ke atas responden-responden selain daripada pemecatan. Mahkamah Tinggi memutuskan bahawa pemecatan itu tidak sesuai dengan salah laku yang dilakukan dan 'was unduly harsh and motivated by an extraneous factor, namely, to nip the in-house union activities in the
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bud'. Perayu telah merayu kepada Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi. A

Diputuskan, membenarkan rayuan dan mengetepikan keputusan Mahkamah Tinggi:

- (1) Penemuan fakta oleh Mahkamah Perusahaan tidak patut dibatalkan oleh Mahkamah Tinggi hanya kerana pendekatan berbeza boleh diambil. Ia bukan fungsi Mahkamah Tinggi untuk mengkaji semula, menilai semula, menaksir semula atau membuat inferensnya sendiri atas fakta untuk menggantikan keputusan tribunal yang khusus dalam industri (lihat perenggan 8). B C
- (2) Penemuan Mahkamah Tinggi bahawa pemecatan tersebut terlalu keras dan 'was motivated by an extraneous factor, namely, to nip the in-house union activities in the bud' pada hakikatnya menggantikan kesimpulan penemuan fakta Mahkamah Perusahaan dalam bidang pengkhususannya (lihat perenggan 9). D
- (3) Walaupun ia dalam kuasa Mahkamah Tinggi dalam prosiding certiorari untuk tidak bersetuju dengan Mahkamah Perusahaan berhubung kesimpulan atau inferens yang dibuat oleh Mahkamah Perusahaan berbanding dengan keterangan yang telah dibuktikan atau diterima atas alasan tiada tribunal munasabah dalam keadaan yang sama dapat tiba kepada inferens sebegitu, ia bukan untuk mahkamah tersebut dengan mudah menggantikan pendapatnya dengan Mahkamah Perusahaan mahupun untuk dengan mudah menggantikan pendapatnya tentang hukuman yang sesuai bagi majikan tersebut, khususnya untuk pemecatan, kecuali hukuman itu tidak rasional (lihat perenggan 10). E F
- (4) Hukuman yang lebih berat daripada apa yang difikirkan sesuai oleh mahkamah tidak bermaksud bahawa hukuman itu adalah tidak rasional. Ia perlulah tidak sesuai langsung agar ia menjadi tidak rasional (lihat perenggan 11). G
- (5) Seorang majikan berhak terhadap pertimbangannya sendiri berhubung hukuman yang sesuai demi kebaikan am syarikat dan pekerja yang lain kecuali jika hukuman itu telah ditunjukkan sebagai tidak rasional. Maklumat yang salah, palsu dan pelanggaran keyakinan, seperti hal perkara pertuduhan-pertuduhan terhadap responden-responden, bukan berada dalam norma-norma yang diterima berhubung kegiatan kesatuan yang sah. Oleh itu, hukuman terhadap responden tidaklah tidak seimbang untuk menjadikannya tidak rasional dan untuk mewajarkan campur tangan (lihat perenggan 11).] H I

Notes

For a case on application for, see 2(1) *Mallal's Digest* (4th Ed, 2012 Reissue) para 1903.

A Cases referred to

Airspace Management Services Sdn Bhd v Col (B) Harbans Singh all Chingar Singh [2000] 3 MLJ 714; [2000] 4 CLJ 77, CA (refd)

Harjanto Effendy bin Zakaria & Ors v Mahkamah Perusahaan Malaysia & Anor [2010] MLJU 1175; [2011] 5 CLJ 188, HC (refd)

B *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417; [1991] 1 CLJ (Rep) 159, SC (refd)

Ng Hock Cheng v Pengarah Am Penjara & Ors [1998] 1 MLJ 153; [1998] 1 CLJ 405, FC (refd)

C *Petroliaam Nasional Bhd v Nik Ramli bin Nik Hassan* [2004] 2 MLJ 288, FC (refd)

Sim Kooi Soon v Malaysia Airline System [2005] 4 MLJ 609; [2005] 2 CLJ 797, HC (refd)

Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 1 MLJ 261; [1996] 2 CLJ 771, CA (refd)

D**Legislation referred to**

Industrial Relations Act 1967 s 20

Rules of the High Court 1980 O 53

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Appeal from: Judicial Review No R3 (R2)–25–234 of 2006 (High Court, Kuala Lumpur)

KC Wong (Teoh Alware with her) (Zul Rafique & Partners) for the appellant.

Edward Saw (VK Raj with him) (Josephine, LK Chow & Co) for the respondents.

F**Abdul Wahab Patail JCA:****BROAD GROUNDS****G**

[1] The High Court on 14 December 2009:

(a) allowed the respondents' application for judicial review pursuant to O 53 of the Rules of the High Court 1980;

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(b) granted an order of certiorari to quash the Industrial Court Award No 965 of 2006 dated 31 May 2006; and

(c) granted an order of mandamus to remit the matter relating to the dismissal of the respondents to the Industrial Court for a re-hearing on the issue of the appropriate punishment: (other than dismissal) to be imposed on the respondents.

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[2] The learned judge allowed the respondents' application for judicial review solely on the ground that the punishment of dismissal imposed on the respondents were disproportionate and remitted the case to the Industrial

Court for a re-hearing on the issue of the appropriate punishment (other than dismissal) to be imposed on the respondents.

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[3] The respondents were, at the material time, principal office bearers of an in-house union known as *Kesatuan Pekerja-Pekerja Guppy Plastic Industries Sdn Bhd*.

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[4] By letter dated 4 June 1998, the seven office bearers of the union were suspended from service for a period of 14 days pending inquiry into five allegations of misconduct as follows:

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- (a) *memberikan maklumat yang tidak benar dan berunsur fitnah kepada pihak luar untuk diterbitkan dan mengakibatkan nama dan imej syarikat tercemar;*
- (b) *mengedarkan satu risalah yang mengandungi cerita yang tidak benar mengenai syarikat tanpa mendapat keizinan secara verbal atau bertulis daripada pihak pengurusan syarikat;*
- (c) *mengugut dan mengancam keselamatan pekerja yang pada fikiran anda enggan untuk menyertai kesatuan yang dipimpin oleh anda;*
- (d) *memaksa pekerja untuk menyertai dan menganggotai kesatuan yang anda pimpin; and*
- (e) *menggunakan masa kerja dan juga premis syarikat untuk menjalankan kegiatan yang tidak berfaedah kepada syarikat.*

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[5] An inquiry found only the respondents guilty of allegations No 1, 2 and 5. The respondents were informed of the outcome of the investigation on 18 June 1998 and dismissed from service.

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[6] They lodged representations under s 20 of the Industrial Relations Act 1967 that they were dismissed without just cause and excuse. It was referred to the Industrial Court for adjudication.

[7] The Industrial Court made a finding of fact that the respondents' misconducts were proven and that in view of the seriousness of the misconduct, their dismissal was with just cause and excuse.

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[8] Findings of fact by the Industrial Court should not be quashed by the High Court simply because a different approach could have been taken. It is not the High Court's function to review, reassess, reappraise evidence, or draw its own inferences on the facts to replace that of a specialised tribunal in industry (see *Sim Kooi Soon v Malaysia Airline System* [2005] 4 MLJ 609; [2005] 2 CLJ 797; *Petroliam Nasional Bhd v Nik Ramli bin Nik Hassan* [2004]

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- A 2 MLJ 288; *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417; [1991] 1 CLJ (Rep) 159).

B [9] The learned judge's conclusion or finding that 'the dismissal was unduly harsh and motivated by an extraneous factor, namely to nip the in-house union activities in the bud' is in fact replacing the conclusion or finding of fact of the Industrial Court within its area of specialisation with his own.

C [10] Although it is within the powers of the High Court in certiorari proceedings to disagree with the Industrial Court on the conclusions or inferences drawn by the latter from the proved or admitted evidence on the ground that no reasonable tribunal similarly circumstanced would have arrived at such a conclusion or drawn such an inference, it is not for the court to lightly substitute its view for that of the Industrial Court, nor for that matter, the latter to lightly substitute its view of what is the appropriate punishment for that of the employer, in particular as to dismissal: *Harjanto Effendy bin Zakaria & Ors v Mahkamah Perusahaan Malaysia & Anor* [2010] MLJU 1175; [2011] 5 CLJ 188; *Ng Hock Cheng v Pengarah Am Penjara & Ors* [1998] 1 MLJ 153; [1998] 1 CLJ 405; *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261; [1996] 2 CLJ 771. Unless the punishment is irrational:

E *Airspace Management Services Sdn Bhd v Col (B) Harbans Singh a/l Chingar Singh* [2000] 3 MLJ 714; [2000] 4 CLJ 77 (CA).

F [11] That a punishment is rather heavier than what a court thinks is appropriate does not mean that the punishment is irrational. It must be so disproportionate that it is irrational. An employer is entitled, on the findings on the first and second allegations in particular, to his own judgment, unless it is shown to be irrational, as to the appropriate punishment for the general good of his company and his other employees. Misinformation, disinformation and breach of confidence as in the first and second allegations are not within accepted norms of legitimate union activity. In these circumstances we do not find the punishment necessarily irrational or so disproportionate as to be irrational as to warrant intervention.

H [12] Accordingly, we allowed the appeal with no order as to costs; set aside the order of the High Court and ordered that the deposit be refunded.

Appeal allowed and High Court's decision set aside.

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Reported by Ashok Kumar